

EX. A

[REDACTED]

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**From:** Halsey, Anna C. [ACHalsey@rkmc.com]  
**Sent:** Wednesday, February 23, 2011 2:45 PM  
**To:** Partridge, Scott; Bowling, Brad; Saucier, Deborah; Michael, Smith; Fulghum, Roger; Pennington Rhodes, Tammy; Barcelo, Rey; BWessel@irell.com; Irell Convolve Team; Kip Glasscock; Richard Birnholz; twerner@irell.com; Doug Lumish; Findlay, Eric; Jeff Homrig  
**Cc:** Anderson, A. James; Burman, Marnell; Burpee, Ailis L.; Butler, Marla R.; Gervin, Delia; Morsell, Wanda L.; Paul, Jordan S.; Sharp, Tara G.; Thomas, Elizabeth V.; Vogel, Bryan J.; EMA - Convolve General; Eric Albritton; Johnny Ward; Steve Edwards  
**Subject:** Convolve, Inc. v. Dell Inc., et al.: Infringement Contentions

Counsel,

Under the scheduling order that Convolve, Western Digital, and Hitachi proposed to the Court, Convolve's deadline for serving Infringement Contentions is this Thursday. Convolve is not changing its legal theory in response to the Court's claim construction order; however, there is one issue that Convolve will clarify in its infringement contentions. Specifically, Convolve's current contentions indicate that the processor/controller of the accused products "outputs commands to at least the digital to analog converter and the amplifier of the hard disk drive before the commands are passed on to the actuator of the hard disk drive." As you know, the Court construed "data storage device" to not require a processor. This aspect of the Court's construction was not proposed by any party and, therefore, was not anticipated by Convolve. While this construction does not necessitate a change in Convolve's infringement theory, Convolve is planning to amend its contentions to explicitly set forth the fact that the processor/controller of the accused products is on a printed circuit board ("PCB") which is attached to and sold with the head disk assembly ("HDA"). The HDA is a data storage device under the Court's construction. The processor/controller on the PCB outputs shaped commands which go to the actuator of the HDA/data storage device. In other words, the processor/controller on the PCB outputs shaped commands to the data storage device. In addition, Convolve intends to update its list of accused WDC hard disk drives and its list of accused Dell products incorporating WDC hard disk drives to specifically name hard disk drives that Convolve only recently discovered pursuant to WDC's production made after Convolve's most recently amended infringement contentions, and also to update its contentions as to Hitachi as noted during our communications with Hitachi regarding our previously proposed amendments. We will also provide additional Bates ranges in our 3-2 Disclosures.

Because the proposed amendment to the charts is only a clarification of our contentions in light of the Court's construction, as opposed to a change in theory, we do not believe that the amendment is prejudicial. Similarly, because Convolve's amendments to the product lists is based solely on the timing of WDC's production, we do not believe these amendments to be prejudicial. We will file our Motion for Leave to Amend this Thursday, but need to know whether Defendants intend to oppose this motion. Please let us know by no later than noon EST, Thursday, February 24, 2011 whether you intend to oppose this motion. If we do not hear from you, we will indicate that it is our understanding that you are opposing our motion.

Best regards,

Anna

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Thank you in advance for your cooperation.

Robins, Kaplan, Miller & Ciresi L.L.P.

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